IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PEITION NO.35 OF 2006

M/s. Phoenix Mills Limited. ...Petitioner.

Versus

Shri Subbarao Ramu Jadhav & Anr. ...Respondents.

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Mr. K.S. Bapat with Mr. Jayesh K. Desai for the Petitioner.
None for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

January 22, 2007.

P.C.:

The Petitioner before the Court is the employer and seeks to challenge an order dated 24th August 2005 passed by the Labour Court in an application under Section 33-C(2) of the Industrial Disputes Act, 1947. By the impugned order the Petitioner has been directed to pay Rs.2,25,640/- to the First Respondent towards terminal dues.

Briefly stated, the case of the First Respondent was that he was working as a Jobber with the Petitioner in the Texmaco

Ring Department since 11th May 1956. On 7th August 1997, the Petitioner was alleged to have stopped furnishing work to the workmen of the aforesaid Department. The case of the First Respondent was that on 22nd August 1997, a settlement was negotiated with the Rashtriya Mill Mazdoor Sangh under which a payment of 36 days per year of service was to be made to the workmen of this Department together with 15 days wages per year of service towards gratuity. The claim of the First Respondent was that he was accordingly entitled to Rs.2,98,004/- towards retrenchment compensation and Rs.1,24,168/- towards gratuity, as against which, he had been paid Rs.72,364/- towards retrenchment compensation and Rs.48,500/- towards gratuity on 22nd September 1997. The last drawn pay of the First Respondent was Rs.5,250/- for 26 days of the work, that is to say, Rs.201.90 per day.

The management filed a Written Statement challenging the maintainability of the application under Section 33-C(2) of the Industrial Disputes Act, 1947. The case of the management was

that while the First Respondent had initially worked as a Badli employee, in the year 1977-78 he had left employment and collected his gratuity and Provident Fund dues. Thereafter, he was engaged as a fresh employee from 24th November 1983 in which capacity, he worked until 22nd August 1997. In other words, the management denied the contention of the workman that he was in continuous service for 41 years. According to the management, the workman was engaged since November 1983 and he had been paid his terminal dues for 14 years' service in accordance with the agreement that was entered into with the representative Union.

Before this Court, it is an undisputed position that a batch of matters along similar lines was adjudicated upon by the Labour Court upon which proceedings were initiated before this Court. A Learned Single Judge of this Court, by a judgment and order dated 20th October 2004 negatived the contention of the management that an application under Section 33-C(2) was not maintainable. However, individual cases came to be remanded back to the Labour Court for a fresh decision. The order of the

Learned Single Judge (Mr.Justice F.I. Rebello) was rendered in **The Director, Phoenix Mills Limited Vs. Chunilal Sudam Nishad** (WP 2599 of 2004). A petition filed by the management against the judgment of the Labour Court on the application under Section 33-C(2) of the First Respondent came up for hearing before this Court on 16th February 2005. Before this Court, Counsel appearing on behalf of the parties in WP 3477 of 2004 were agreed that the petition would be covered by the judgment rendered by Mr.Justice F.I. Rebello on 20th October 2004 in Writ Petition 2599 of 2004. Consequently, in terms of the earlier order of the Court, the petition filed by the management was allowed by setting aside the order of the Labour Court with a consequential order of remand.

After the order of remand, additional evidence was adduced on behalf of the First Respondent. The Labour Court was of the view that the claim of the First Respondent was both maintainable in law and tenable on merits. Accordingly, the Petitioner was directed to pay to the First Respondent an amount of Rs.2,25,640/- towards his terminal dues. The Labour Court

accepted the case of the First Respondent that he was in continuous service from 1956 till 1997. The Labour Court noted the admission of the First Respondent that he had withdrawn his Provident Fund in 1977 for the period between 1956 and 1977 and that he was given a new Provident Fund number when he rejoined service in 1983. Similarly, it is an admitted position that for the prior period until 1977, the First Respondent had a separate attendance card Exh.U-26 while for the subsequent period after 24th November 1983 the name of the First Respondent was borne on another card, Exh.C-21. Nonetheless, the Labour Court held that there was nothing to indicate that the services of the First Respondent were terminated in accordance with law in 1977. Holding that the employer had not produced the record, the Labour Court accordingly drew an adverse inference and allowed the claim of the First Respondent.

In assailing the judgment of the Labour Court, Counsel appearing on behalf of the Petitioner submitted that there was a clear attempt on the part of the First Respondent to improve upon

his case. When the First Respondent initially adduced evidence prior to the order of remand, he had admitted in the course of his cross-examination that he had joined the Mills in the year 1983 as a permanent workman and that all his legal dues were paid to him for the period 1983 to 1997. However, when the First Respondent gave additional evidence after the order of remand, he sought to improve upon his case, by contending that he was in service between the period 1977 and 1983 as well. However, the material admissions on the part of the First Respondent, in the course of the cross-examination – it was submitted – have been completely overlooked by the Labour Court. Similarly, it was urged that there was absolutely no cross-examination on the material aspect of the evidence of the Petitioner's witness who had deposed that the First Respondent had in 1977 left the services of the management and collected all his dues including gratuity and Provident Fund. In these circumstances, it was submitted that the view which has been formed by the Labour Court would be required to be interfered with in the exercise of the jurisdiction under Article 226 of the Constitution since material aspects of the evidence have

manifestly been overlooked. Finally, it was submitted that the management had entered into a memorandum of agreement with the recognised Union on 19th October 1997 under which it was stipulated that the Texmaco Ring Department shall be closed down permanently and that the employees who were to be paid gratuity and ex-gratia had individually verified and approved the amount due and payable, upon which they had resigned from the services of the management.

The Respondent was initially represented in these proceedings by a Learned Advocate Shri B.C. Shah. The petition was admitted and interim relief was granted staying the operation of the order of the Labour Court subject to a deposit of the amount as quantified before the Court. During the pendency of the petition, it was reported before the Court that the Learned Advocate appearing on behalf of the workman had expired. On 17th July 2006, a Learned Single Judge of this Court directed notice to be issued to the First Respondent. There is an office noting to the effect that the notice was served on the First Respondent by hand

delivery on 20th July 2006. The First Respondent has not appeared thereafter. The relevant aspects of the pleadings and the evidence have fairly been placed before the Court by Counsel appearing on behalf of the Petitioner.

The application filed by the First Respondent proceeded on the basis that he had been engaged by the Petitioner since 11th May 1956 and it was on 7th August 1997 that the management stopped giving employment to the workmen of the Texmaco Ring Department. The First Respondent then set up the case that a negotiated settlement was entered into on 22nd August 1997 with the Rashtriya Mill Mazdoor Sangh, which was a recognised Union. The case of the management, as already noted, was that the First Respondent was a Badli employee who was engaged until 1977-78 at which stage, the First Respondent had collected his gratuity and Provident Fund dues and left employment. Subsequently, on 24th November 1983, the First Respondent was, according to the management, engaged as a fresh employee and that he had worked continuously till 22nd August 1997. The First Respondent

stepped into the witness box in support of his case. In the course of his cross-examination, the First Respondent admitted that in the year 1977 he had received his Provident Fund dues after which he was unemployed. The First Respondent made a specific admission of the fact that in the year 1983, he had joined the Mill as a permanent workman. Finally, the First Respondent stated that it was true that his legal dues were paid to him for the period 1956 to 1977. The witness who deposed on behalf of the management stated in the course of his Examination-in-Chief that it was the First Respondent who had left service in 1977 after collecting his Provident Fund and gratuity. The witness stated that the First Respondent had thereafter rejoined on 24th November 1983 at which point of time he was furnished with a new Provident Fund number. The engagement on and from 24th November 1983 was, according to the management, as a fresh employee. Significantly, there is absolutely no cross-examination on the case of the management that the workman had left service in the year 1977 and that when he joined service on 24th November 1983 that was in the capacity of a fresh employee. After the order of remand was

passed by this Court on 16th February 2005, a clear effort was made on the part of the First Respondent to improve upon his case by stating that he was working with the management between 1977 and 1983. The workman was confronted with his statement in the course of his cross-examination at the earlier stage to the effect that he had joined services in 1983 as a permanent workman. The workman stated that he had no documentary evidence to show that he personally worked during the period 1977 to 1983. The workman admitted that he had withdrawn his Provident Fund in 1977 and that his Provident Fund account was closed. The workman admitted that in 1983 he was given a new Provident Fund number. Similarly, he admitted that the Card at Exh.U-26 was for the work done by him till 1977 while the Card at Exh.U-21 was for the period after 24th November 1983. The workman stated that during 1977 to 1983, he had worked in different Departments of the Company but he was unable to state the name of the manager who was working in the particular departments during that period.

There is merit in the submission urged on behalf of the

Petitioner that the Industrial Court has clearly lost sight of these material admissions contained in the deposition of the workman. In the course of his cross-examination, when he first gave evidence, the workman had admitted that in 1983, he joined as a permanent workman. There was also an admission to the effect that he had received his Provident Fund dues in 1977. This must be read in the context of the fact that there was absolutely no cross-examination of the management's witness on the statement that the workman had left service in 1977 by collecting his terminal dues and that he had joined the service as a fresh employee in 1983. In the face of the admissions of the workman himself, the Labour Court was not justified in drawing an adverse inference against the management solely on the ground that the management had not produced its record before the Court. From the record, it does not appear clear as to whether a summons for production was sought and whether an order was passed thereon. Be that as it may, having regard to the clear admissions on the part of the workman the drawing of an adverse inference was not clearly warranted.

That apart, a copy of the Memorandum of Agreement dated 19th October 1977 between the Petitioner and the recognised Union (RMMS) has been placed on the record. Clause (1) of the agreement provides as follows:

> "1. The entire Texmaco Ring Frame Section consisting of 16 Ring Frames shall be closed down permanently. Out of the 45 permanent and 9 temporary employees will be paid gratuity and ex gratia payment. The employees covered under this settlement have individually verified and approved the amount and submitted their resignation to the mill company and the mill company has accepted the said resignation of the employees." (emphasis supplied).

Clause (1) of the settlement, therefore, clearly stipulates that each of the employees covered by the settlement had individually verified and approved the amount due and payable to him.

In the face of this evidence, the Labour Court was clearly not justified in passing an order for the payment of an amount of Rs.2,25,640/- on the basis that the First Respondent was in continuous employment between the period 1956 and 1997.

The material on the record does not warrant any such inference. At the highest, should the First Respondent be desirous of seeking an adjudication of his claim, it is open to him to seek a reference under Section 10 of the Industrial Disputes Act, 1947. An order of the kind in proceedings under Section 33-C(2) was clearly not warranted.

For the aforesaid reasons, the petition shall have to be allowed and is accordingly allowed. Rule is made absolute in terms of prayer clause (a) by quashing and setting aside the judgment of the Labour Court dated 24th August 2005 in Application (IDA) 111 of 1998. Application (IDA) 111 of 1998 shall accordingly stand dismissed. However, it is clarified that this shall not preclude the First Respondent to seek recourse to a reference to adjudication under Section 10 of the Industrial Disputes Act, 1947. Should such a reference be sought and be made, the Industrial Court shall decide upon the reference without considering itself to be bound by the observations in this judgment which are confined to the disposal of the application under Section

33-C(2).

In view of the aforesaid order, the Petitioner shall be at liberty to withdraw the amount which has been deposited in this Court in pursuance of the interim order, together with accrued interest, if any, thereon.

The Petition is accordingly disposed of. There shall be no order as to costs.

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